

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
CTIA Petitions for Declaratory Ruling on	)	
Wireline-Wireless Porting Issues	)	

**COMMENTS  
OF THE  
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (NTCA) hereby submits Comments in response to the Commission's request for Comments on the Further Notice of Proposed Rulemaking (FNPRM) in the above captioned docket.<sup>1</sup> NTCA submits that most of the issues discussed in the Commission's FNPRM are properly treated as an inquiry rather than a proposed rulemaking. There are no concrete proposals upon which the industry can provide meaningful comment. The initial regulatory flexibility analysis does not describe "steps taken to minimize significant economic impact on small entities" as is required. It merely describes the harm created by previous Commission action and asks for the industry to come up with ways to alleviate that harm. The Commission's action in this proceeding is procedurally flawed. The Commission should stay, on its own motion, all of the wireline-wireless porting obligations until these and other outstanding issues are resolved.

## **I. THE ISSUES RAISED IN THE FNPRM ARE PROPERLY TREATED AS AN INQUIRY RATHER THAN A RULEMAKING**

The Commission seeks comment on how to facilitate wireless to wireline porting where there is a mismatch between the rate center associated with the wireless number and the rate center in which the wireline carrier seeks to serve the customer. It asks for information about the technical limitations, and the regulatory requirements that make this porting difficult. As the Commission is well aware there are numerous technological and regulatory constraints that make wireless to wireline porting impossible where the rate centers do not match and the wireless carrier has no point of interconnection with the wireline provider.<sup>2</sup>

The Commission offers no concrete proposals on how to make wireless to wireline portability a reality. It offers three “options,” but provides no explanation on how any of these proposed options could work. Also lacking is a discussion of the enormity of the proposals.<sup>3</sup> The “options” could involve changing the entire regulatory regime and intercarrier compensation scheme under which the rural wireline carriers operate.

The “options” presented in this FNPRM are lofty and unrealistic. There is no way for the industry to know what it is the Commission is considering doing in this

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<sup>1</sup> In the Matter of Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, *Further Notice of Proposed Rulemaking*, CC Docket No. 95-116, FCC 03-284 (rel. Nov. 10, 2003).

<sup>2</sup> It was the Commission who decided that interconnection agreements are not necessary for wireline to wireless porting; therefore, the difficult issues presented in this proceeding are of the Commission’s own making. Nevertheless, the Commission now asks the industry to come up with a way to fix the competitive inequities.

<sup>3</sup> Notably missing from the list of “options” is requiring wireless providers to interconnect with wireline providers. Requiring such interconnection agreements would solve the competitive inequities created by the Commission’s action.

proceeding. There are no proposed rules in this rulemaking, only ideas that are more properly the subject of a Notice of Inquiry or dealt with in other outstanding proceedings.

## **II. THE REGULATORY FLEXIBILITY ANALYSIS IS PROCEDURALLY FLAWED**

The Regulatory Flexibility Act requires the Commission to describe the impact that its proposed rules has on small entities and the alternatives that it has considered in reaching its proposals. However, rather than describe the impact its proposed rules will have, it describes the disparate impact of its current rules and requests comment on how to alleviate that impact through its proposals. It is therefore performing its analysis after the harmful rules were adopted. This is procedurally defective and undermines the intent and purpose of the Regulatory Flexibility Act. The Commission is to consider the impact of its rules and consider alternatives BEFORE its rules are adopted. It may not reverse that process.

Further, as described above, there are no concrete proposals upon which small carriers can comment. The regulatory flexibility analysis merely restates the “options” presented elsewhere in the FNPRM and states that they are “an excellent opportunity for small entity issues to describe their concerns and propose alternative approaches.” However, under the Act, the Commission is required to examine and identify the impact of the rulemaking on small businesses, and discuss possible alternatives that may achieve the same objective in a less burdensome way.<sup>4</sup> The Commission may not place that burden on the industry.

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<sup>4</sup> 5 USC §603

### **III. THE COMMISSION SHOULD STAY THE PORTING REQUIREMENTS UNTIL THE OUTSTANDING ISSUES ARE RESOLVED**

Currently, there is no way for wireline carriers to port in numbers from wireless carriers when there is a mismatch between the rate center associated with the wireless number and the rate center in which the wireline carrier seeks to serve the customer. The only way to do away with the “unfair competitive advantage” and heavy burden this situation imposes on small wireline carriers is to stay the wireline to wireless porting obligations until the reverse porting is also possible.

There are also numerous unresolved issues surrounding wireline to wireless number portability. To date, neither the FCC nor the industry has determined who pays for the transport of traffic to the tandem when a rural wireline carrier’s customer calls a person physically located in the wireline carrier’s rate center, but who has ported his or her number to a wireless carrier without a point of presence in the wireline carrier’s rate center. Also unknown is whether the calling customer will receive a toll charge or whether the call will be dropped. Another unknown is whether the wireline carrier will be able to recover access for calls traveling over its network.

The only way number portability will be achieved fairly and in accordance with the procedural safeguards established by law, is for the Commission to extend its most recent waiver for small carriers within the top 100 MSAs and to stay the May 24, 2004 deadline for carriers outside of the top 100 MSAs until the outstanding implementation issues have been addressed.

#### IV. CONCLUSION

The Commission's FNPRM in this proceeding is fraught with defects. It fails to provide the industry with any meaningful proposals upon which it can comment and lacks a sufficient Initial Regulatory Flexibility Analysis. Given that there are also numerous technical and cost recovery implementation issues that must be resolved before wireline-wireless number portability becomes a credible option for the consumer, the Commission should stay its wireline-wireless implementation deadline until a sufficient analysis and decision on the issues is achieved.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS  
COOPERATIVE ASSOCIATION

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January 20, 2004

## CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in CC Docket No. 95-116, FCC 03-284 was served on this 20th day of January 2004 by first-class, U.S. Mail, postage prepaid, to the following persons.

/s/ Gail Malloy

Gail Malloy

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